



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2018

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.14745 of 2018

and

Crl.M.P (MD) No.6548 of 2018

Athisaya Raja

... Petitioner/Petitioner/
Accused No.2**Vs.**The State Rep by
The Inspector of Police
Nesamani Nagar Police Station
Kanyakumari District
(Crime No.149 of 2009)... Respondent/Respondent/
Complainant

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 14.06.2018 passed in C.M.P.No.2564 of 2018 in C.C. No.126 of 2010 on the file of the learned Judicial Magistrate No.I, Padmanabapuram, Kanyakumari District, wherein the petition filed under Section 311 of Cr.PC to recall and cross examine P.W-1 and P.W-2 was dismissed by raising the following among other.

For Petitioner	: Mr.A.Thiruvadi Kumar
For Respondent	: Mr.K.Suyambulinga Bharathi Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed challenging the dismissal of the application filed under Section 311 of Cr.P.C by the petitioner to recall and cross examine PW 1 and 2.

2. The learned Judicial Magistrate No.I, Padmanabapuram had given sufficient reasons for dismissing the application filed under Section 311 of Cr.P.C. It is also seen from the records that this petitioner did not appear before the court regularly and Non Bailable Warrant was issued for his appearance and the same was recalled by the Court below. It is more evident from the petition filed before the court below wherein absolutely there is



no reason given as to why PW 1 and 2 were not cross examined for a period of more than six years. This Court does not find any illegality or infirmity in the order passed by the Court below.

3. The learned Government Advocate (Crl.Side) would submit that subsequent to the examination of PW 1 and 2 no other witnesses were examined by the prosecution and presently the case is posted for examination of PW's 3 to 5.

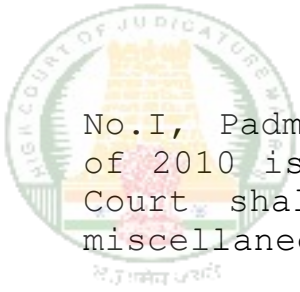
4. Since the case continues to be at the stage of evidence and no other witnesses has been examined after examination of PW 1 and 2, this Court deems it fit to give one more opportunity to the petitioner to recall and cross examine PW.1 and 2.

5. The trial Court is directed to fix a date for appearance of PW's 1 and 2 and on their appearance they shall be furnished with the depositions so that the witnesses can refresh their memory and only thereafter they can be cross examined. On the day when the witnesses appears, if for any reason the petitioner fails to cross examine the witnesses even on account of boy cott of the Courts, the petitioner will forfeit his right to recall the witnesses again. The petitioner shall pay a costs of Rs.1000/- (Rupees One thousand only) to each of the witnesses when they come for giving evidence.

6. The learned counsel for the petitioner is further directed to cross examine all the other witnesses on the very same day when they are examined in chief and the Court below shall ensure that the direction given by the Hon'ble Supreme Court in **Vinod Kumar vs. State of Punjab [2015(1) MLJ (crl) 288]** is strictly complied with.

7. If for any reason the petitioner fails to cross examine any of the witnesses on the day when they are examined in chief, the petitioner will forfeit his right to cross examine the witness thereafter. It is seen that the proceedings before the Court below has been pending for a long time due to non appearance of the accused persons and the issuance of the Non Bailable Warrant, which was subsequently recalled. The C.C is of the year 2010 and till now only two witnesses have been examined. If the accused persons adopt any dilatory tactics, it is open to the trial court to insist upon their presence and proceed against them in line with the judgment of the Honourable Supreme Court in **State of Uttar Pradesh v. Shambunath Singh [JT 2001 (4) SC 319]**.

8. The learned Judicial Magistrate No.I, Padmanabapuram is directed to complete the proceedings as expeditiously as possible but not later than three months from the date of receipt of a copy of this order. In the result the Criminal Original Petition is allowed and the order passed by the learned Judicial Magistrate



No.I, Padmanabapuram made in C.M.P.No.2564 of 2018 in C.C.No.126 of 2010 is hereby set aside. The above directions given by this Court shall be strictly complied with. Consequently connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Judicial Magistrate No.I,
Padmanabapuram.
2. The Inspector of Police
Nesamani Nagar Police Station
Kanyakumari District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.A.THIRUVADI KUMAR, ADVOCATE IN SR No. 79812

AAV

TE/SKN/SAR-2 : 03/09/2018 : 3P/5C

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Cr1.M.P (MD) No.6548 of 2018
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